establish their respective claims thereto. The application by KAF Land Sdn. Bhd. was, in consequence, dismissed. Lastly, I ordered costs of all three applications to be paid to Tengku Ibrahim.

Order accordingly.

Solicitors: *C.S. Ong & Co.; Azman & Davidson & Co.*

CHIN YOON & ORS. v. CHAIRMAN, RENT APPEAL BOARD, SEREMBAN & ORS.

[O.C.J. (Peh Swee Chin J.) June 5, 1984]
[Seremban — Originating Motion No. 12 of 1983]

Administrative Law — Certiorari — Application to quash order of Appeal Board — Whether Appeal Board can refuse to supply notes of arguments — Notes of arguments not regarded as notes of evidence.

The applicants in this case filed the Motion for issue of *certiorari* to have the order of Appeal Board, Seremban made under the Control of Rent Act, 1966 on April 9, 1983 quashed. What was filed consisted of the Memorandum of Appeal, the bare Order dated April 9, 1983 and the appeal record relating to the earlier proceedings before the Rent Tribunal for the Seremban District, but without the notes of arguments advanced by both the learned counsel before the learned Chairman of the Appeal Board. The Court was minded to call for a copy of the said notes of arguments from the Appeal Board. Learned counsel for the respondents objected to it.

The issue before the Court here was whether the Appeal Board could refuse to supply a copy of the notes of arguments advanced before it.

Held: (1) notes of arguments cannot be regarded or treated as notes of evidence, which is taken on oath or affirmation. Without having the notes of arguments, this Court would be somewhat hamstrung, and in this sense, the situation could be equated with having an incomplete record;

(2) the learned Chairman of the Appeal Board is therefore ordered to send in within 14 days, a certified copy of the said notes of arguments.

Case referred to:

(1) *R. v. Northumberland Compensation Appeal Tribunal, Ex Parte Shaw* [1952] 1 All E.R. 122, 130 & 131.

ORIGINATING MOTION.

A.K.J.D'Cruz for the applicants.
N. Ramachandran for the respondents.

Cur. Adv. Vult.

Peh Swee Chin J.: I have adjourned this matter earlier, mainly to consider a question of some importance relating to the practice and procedure of application for issue of *certiorari*. I now give my decision thereon.

The point arose in this way. The applicants herein have filed the Motion for issue of *certiorari* to have the order of Appeal Board, Seremban made under the Control of Rent Act, 1966 on April 9, 1983 quashed. What was filed consisted of the Memorandum of Appeal, the bare order dated April 9, 1983 and the appeal record relating to the earlier proceedings before the Rent Tribunal for the Seremban District, but without the notes of arguments advanced by both learned counsel before the learned Chairman of the Appeal Board. The Court was minded to call for a copy of such notes of arguments from the Appeal Board and asked counsel if they had any objection. Learned counsel for the respondents herein, objected to it, while learned counsel for the applicants herein, supported this, predictably. It transpired that the Appeal Board had not answered letters from the applicants herein requesting for a copy of the notes of arguments and grounds of decision, and it is reasonable to infer that the request has been refused.

The point of practice and procedure is as to whether the Appeal Board can refuse to supply a copy of the notes of arguments advanced before it.

Both counsel have concentrated their written submissions (which the learned counsel for the applicants herein has asked to be allowed in place of oral submission to the Court), on a point of preliminary objection first raised by the respondents herein, at the hearing in connection with some different matter. They have, by comparison, only skimmed over the surface on this question of notes of arguments by merely, on the part of respondents, objecting to the Court calling for copy of the notes of arguments, and on the part of the applicants, supporting it.

In my view, the answer is to be found in the well-known case of *R. v. Northumberland Compensation Appeal Tribunal, Ex Parte Shaw*[1]. Lord Denning in dealing with the nature of the record, in connection with application for *certiorari* to quash an error of law on face of record, held or suggested that if the record sent to the King's Bench was incomplete, the inferior tribunal in question might be ordered to complete it, i.e. to send in the other documents as desired, on the basis of cases cited and considered by his Lordship there and that such record must contain, to quote: "... at least the documents which initiate the proceedings, the pleadings, if any, and the adjudication, but not the evidence, nor the reasons, unless the tribunal chooses to incorporate them. ..."

Notes of arguments cannot be regarded or treated as notes of evidence, which is, of course, taken on

oath or affirmation. Without having the notes of arguments, this Court will be somewhat hamstrung, and in this sense, the situation can be equated with having an incomplete record.

In passing, it is well-established by authorities that normally, an inferior tribunal should not be compelled to supply grounds of decision but we are concerned merely with the notes of arguments on the basis of which the learned Chairman had made the order called in question.

I therefore make an order calling on the learned Chairman of the Appeal Board in question to send in within 14 days, a certified copy of the notes of arguments recorded in Seremban District Appeal Board Appeal No. 1 of 1980.

I will now hear counsel further on the other matter of the preliminary objection mentioned by me earlier.

Order accordingly.

Solicitors: *A.K.J. D'Cruz & Co.; N. Ramachandran & Co.*

SERPLY SDN. BHD. v. PROTEXA DRILLING (M) SDN. BHD.

[O.C.J. (Zakaria Yatim J.) June 9, 1984]
[Kuala Lumpur — Civil Suit No. C867 of 1983]

Practice & Procedure — Order of attachment — Application to set aside — Failure of plaintiffs to disclose correct information in ex parte application — Order of attachment set aside — Damages allowed — Debtors Act 1957, s. 19(1).

The plaintiffs claimed against the defendants for commission money due to them. The plaintiffs relied on telex DMI which reads as follows:

"THIS WILL CONFIRM OUR AGREEMENT THAT PROTEXA DRILLING (MALAYSIA) SDN. BHD. WILL PAY SERPLY SENDIRIAN BERHAD A COMMISSION OF ONE (1) PERCENT OF REVENUES RECEIVED FROM PETRONAS CARIGALI SDN. BHD. CONTRACT NUMBER 281/60/018 FOR THE SERVICES OF THE DRILLSHIP CORA INCLUDING THE MOBILIZATION PAYMENTS, DAY RATE PAYMENTS FOR THE INITIAL TERM AND ONE YEAR EXTENSION OPTION, IF EXERCISED, AND THE DEMOBILIZATION PAYMENT.

WE ARE DRAFTING A FORMAL AGREEMENT TO THIS EFFECT WHICH WE WILL SUBMIT FOR YOUR REVIEW SHORTLY."

The defendants in this case sought to set aside an order of attachment before judgment made against their property, namely, Bank A/C No. 0-110355-017 at Citi Bank, Kuala Lumpur for a sum not exceeding $368,044.47. The defendants also sought for damages suffered by them as a result of the attachment and for costs. The defendants contended that (a) the plaintiffs failed to satisfy the requirements of section 19(1) of the Debtors Act and (b) the plaintiffs, in their *ex-parte* application for the attachment order, had not fully disclosed material facts and had made inaccurate statements.

Held: (1) since the telex DMI was a complete agreement the plaintiffs therefore had a cause of action against the defendants to recover the commission money due to them;

(2) however, the question of running away from the jurisdiction of the Court did not arise. The plaintiffs, therefore, failed to show, a *prima facie* case against the defendants in respect of the second requirement of section 19 of the Debtors Act 1957;

(3) the failure of the plaintiffs to disclose the correct information in their *ex parte* application was a good ground to discharge the attachment order;

(4) the order of attachment dated April 26, 1983 should therefore be set aside;

(5) a date would be fixed for the assessment of damages by the defendants as a result of the attachment;

(6) the costs of this application should be paid by the plaintiffs in any event.

Cases referred to:

(1) *Kepong Prospecting Ltd.* v. *Schmidt* [1962] M.L.J. 375.
(2) *Datuk Abu Mansor bin Mohamed Nasir* v. *Bank Kerjasama Rakyat Malaysia Bhd. & Anor.* [1982] 1 M.L.J. 258, 260.
(3) *Hari Singh* v. *Sundarammal* [1965] 2 M.L.J. 174, 175.

CIVIL SUIT.

William Leong for the defendants.
Joseph Loo for the plaintiffs.

Cur. Adv. Vult.

Zakaria Yatim J.: This is an application by the defendants to set aside an order of attachment before judgment made against their property, namely, Bank Account No. 0-110355-017 at Citi Bank, Medan Pasar Branch, Kuala Lumpur for a sum not exceeding $368,044.47. The defendants are also asking for damages suffered by them as a result of the attachment and for costs.

The defendants' application to set aside the attachment order is based on two main grounds: First, the plaintiffs failed to satisfy the requirements of section 19(1) of the Debtors Act; and, secondly, the plaintiffs, in their *ex-parte* application for the attachment order, had not fully disclosed material facts and had made inaccurate statements.

I shall now deal with the first ground. Section 19(1) of the Debtors Act states as follows:

"19(1) If it is shown to the satisfaction of the court, at any time after the issue of a writ of summons, by evidence on oath, that the plaintiff has a good cause of action against the defendant, and:

(a) that the defendant is absent from the State and that his place of abode cannot be discovered;